

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

WESBANCO BANK, INC.,

Plaintiff,

v.

CIVIL ACTION NO. 2:19-cv-00821
HONORABLE IRENE C. BERGER

TODD LESSER

Defendant.

**PLAINTIFF WESBANCO BANK, INC.'S RESPONSE
TO ORDER TO DEMONSTRATE GOOD CAUSE**

Plaintiff, WesBanco Bank, Inc., a West Virginia banking corporation (“WesBanco”), by and through its counsel, James W. Lane, Jr., William J. Aubel, and Flaherty Sensabaugh Bonasso PLLC, hereby files its response to this Court’s March 9, 2020, Order to Demonstrate Good Cause for not serving the Defendant, Todd Lesser (“Defendant”), with process. Defendant was served with WesBanco’s Complaint on February 18, 2020, within ninety (90) days after the Complaint was filed and within the time limit for service specified in *Federal Rule of Civil Procedure* 4(m).

After filing its Complaint, WesBanco enlisted the assistance of a California process server and a San Diego, California-based private investigator to effectuate service upon the Defendant. After multiple failed attempts at service, the private investigator finally effectuated service of process on the Defendant at his home on February 18, 2020, in accordance with *Federal Rule of Civil Procedure* 4(e)(2)(B). (See Aff. of Service of Private Investigator Gregory Long, attached as Exhibit A). Thus, WesBanco properly served the Defendant within the ninety-day period.

WesBanco shall file a motion for default judgment in the immediate future. Should the Court determine WesBanco has not served Defendant, the affidavit at Exhibit A shows diligent efforts to serve Defendant and good cause for the Court to extend WesBanco's deadline to serve Defendant.

WHEREFORE, for the reasons outlined above, Plaintiff WesBanco Bank, Inc. respectfully requests that this Court refrain from dismissing this action so that it may be heard on its merits.

Respectfully Submitted,

WESBANCO BANK, INC.

By Counsel,

/s/William J. Aubel

James W. Lane, Jr. (WVSB #6483)

William J. Aubel (WVSB #13097)

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**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

WESBANCO BANK, INC.,

Plaintiff,

v.

CIVIL ACTION NO: 2:19-821

TODD LESSER,

Defendant.

AFFIDAVIT OF SERVICE

I, Gregory Long, do hereby solemnly swear:

1. I am a private investigator in the San Diego, California area.
2. On December 20, 2019, counsel for Plaintiff WesBanco Bank, Inc. ("WesBanco"), engaged my services to locate and personally serve the Defendant, Todd Lesser (the "Defendant"), with a copy of the Complaint for Civil Action No. 2:19-821 in California.
3. I attempted to locate and serve the Defendant at the office space owned by him located at 4008 Taylor Street #201, San Diego, CA 92110. However, the office space was all locked up with no tenants.
4. After investigating the various properties owned by the Defendant, I determined that the best opportunity for a successful service of process was at the Defendant's home residence located at 2717 Hidden Valley Road, La Jolla, California 92037-4028 (the "Residence").
5. I visited the Residence on multiple occasions and attempted service by knocking on the front door. Although I could hear noise coming from the Residence, nobody ever came to answer my knocking other than the Defendant's dog.
6. On Sunday, January 13, 2020, I was parked at the end of the Defendant's driveway and observed who I believed to be the Defendant's spouse taking the trash out. She is a white female with long blonde hair, in her mid-thirties, and a height and weight of approximately five feet six inches and one hundred thirty-five pounds. I exited my vehicle and attempted to serve her. However, as soon as she noticed me, she quickly made her way back up the driveway to the Residence. By the time I reached the top of the Defendant's driveway she was already back inside the Residence and nobody answered my subsequent knocking on the front door.

7. On Sunday, February 9, 2020, I conducted a stakeout in hopes that I would effectuate service on the Defendant or his spouse while they took the trash out. My stakeout was unsuccessful as I saw neither the Defendant nor his spouse.

8. I returned to the Residence the following morning, Monday, February 10, 2020. At approximately 7:55 a.m., a grey BMW departed from the Defendant's driveway. I followed the BMW in my vehicle. Because there was no way to hide my vehicle, the BMW sped away and deliberately took a detour to disallow me to meet it in a crowded intersection where I could jump out of my vehicle and place the service papers on the BMW's windshield.

9. Following this unsuccessful attempt, I ran the BMW's license plate and confirmed that the vehicle was registered to the Defendant's spouse, Andrea Lesser.

10. On Tuesday, February 18, 2020, I arrived at the Residence for another stakeout. At approximately 6:30 a.m. I parked my vehicle a safe distance away from the Residence to avoid detection. I exited my vehicle and walked to the end of the Defendant's driveway and sat on a chair and waited for any sign of the Defendant or his spouse.

11. At approximately 8:01 a.m., the Defendant's spouse drove down the driveway in her vehicle. I verbally informed her that she'd been served as she drove by. A photograph of the Defendant's spouse's vehicle driving past me at 8:01 a.m. on February 18, 2020 is attached as **Exhibit A**.

12. I then proceeded up the Defendant's driveway and left a copy of the Complaint and Summons at the Residence's front door. A photograph of the service papers as I left them on the Residence's front door is attached as **Exhibit B**.

13. On February 18, 2020, I, a credible person over the age of twenty-one (21) years old, being first duly sworn, on my oath state that I personally served a Complaint upon the Defendant's spouse, located at 2717 Hidden Valley Road, La Jolla, California 92037-4028.

14. Prior to successfully serving the Complaint upon the Defendant's spouse, the Defendant and/or his spouse evaded my attempts at service on multiple occasions.

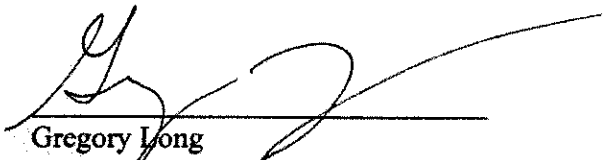
15. After successfully serving the Complaint upon the Defendant's spouse, I mailed copies of the Summons and Complaint to the Defendant at the address where I left the documents, 2717 Hidden Valley Road, La Jolla, California 92037-4028.

16. I have personally served numerous parties over the years by utilizing the same methods that I employed in this case. All of those completed services have been upheld by the courts of California and found to be sufficient under the Rules of Civil Procedure.

17. I have personal knowledge of the foregoing and am competent to be a witness.

18. I certify under penalty of perjury that the foregoing is true and correct

Executed: February 28, 2020.


Gregory Long

STATE OF California:
COUNTY OF San Diego

Taken, subscribed and sworn to before me by Gregory Long, on February 28, 2020.

My commission expires: March 20, 2022

Notary Public: 

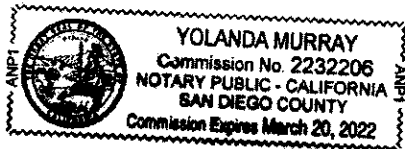


EXHIBIT A



EXHIBIT B

